J.I.T. Steel, Inc., *and* United Steelworkers of America, AFL–CIO. Case 32–CA–17346

January 8, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On September 11, 2000, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed limited exceptions and a brief in support of its exceptions and in answer to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, J.I.T. Steel, Inc., Tulare, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Charles H. Pernal Jr., for the General Counsel.
James W. Michalski (Riordan & McKinzie), of Los Angeles, California, for the Respondent.
Jerry Mongello, Staff Representative (United Steel Workers of America), of Covina, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Clovis, California, on October 19–22, 1999. On March 30, 1999, United Steelworkers of America, AFL–CIO (the Union) filed the original charge alleging that J.I.T. Steel, Inc. (Respondent) committed certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). On June 29, 1999, the Regional Director for Region 32 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent alleging that Respondent violated Section 8(a)(1) and (3) of the Act. Respondent filed a timely answer to the complaint denying all wrongdoing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, from my observation of the demeanor of the witnesses[1] and having considered the posthearing briefs of the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent is a California corporation with an office and place of business in Tulare, California, where it has been engaged in the business of cutting steel coil to size for its nonretail customers. During the 12 months prior to issuance of the complaint, Respondent purchased and received goods and services valued in excess of $50,000 from suppliers located outside the State of California. Respondent admits and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Issues

The complaint alleges that Respondent violated Section 8(a)(1) and (3) of the Act by issuing a written warning to Rudy Ramirez on March 12, 1999, issuing a written warning and a 3-day suspension to Danny Romero on March 12, 1999, and issuing a final warning notice to Danny Romero on April 8, 1999, because of their union and protected concerted activities. The complaint further alleges that Respondent independently violated Section 8(a)(1) of the Act by engaging in surveillance of employees' union activities, by threatening that it would close its business if employees selected the Union as their bargaining representative; by discriminatorily implementing and enforcing a no-talking rule, by implementing stricter lunch and break schedules in response to employees' union activities; and by maintaining an unlawful rule concerning solicitation in the employee handbook.

B. The Facts

In January 1999, certain of Respondent's employees met with representatives of Teamsters Local 517 in Visalia, California. Representatives of Local 517 informed the employees that Local 517 could not represent the employees. Thereafter the employees set up a meeting with another teamsters local in Tulare, California. Employees Rudy Ramirez, Danny Romero, Jose Hernandez, David Ortega, Gilbert Hernandez, and Supervisor Sergio Loscano attended this meeting. The Teamsters' representative wore a black and gold jacket with a teamsters' logo on the back. During the meeting, which was held at a pizza restaurant, Supervisor Eric Ballesteros entered the restaurant with his family. Ballesteros walked right by the table where the union meeting was being held.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d. Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[1] The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

Shortly after the meeting at the pizza restaurant, Supervisor Loscano told Ramirez that Loscano could no longer be part of the unionization drive. Loscano said that Production Manager Rui Godinho had told Loscano, "I can understand [Ramirez] and [Romero] but not you, Sergio, because you could just (sic) become a supervisor and you're not eligible to vote anyway."

After contacting the Teamsters, Ramirez contacted the Union. Ramirez attended a meeting with Al Madrigal, a staff representative of the Union. Also attending this meeting were Romero, George Rocha, and Jose Herrera. At a meeting with Madrigal, on February 12, Ramirez and Romero signed union authorization cards. In addition, they agreed to take blank cards in order to solicit the signatures of fellow employees.

Ramirez distributed union authorization cards, talked to employees about the Union at work and notified employees of union meetings. Romero also engaged in these activities. On March 8, Ramirez observed union officials distributing flyers in the Respondent's parking lot. Ramirez joined these union officials for about 5 minutes. Phillip Hill, Respondent's plant manager, Rui Godenho, Production Manager, and two other managers observed Ramirez on this occasion. Romero joined the union officials for a few minutes while they were handbilling at the Respondent's premises. Godenho observed Romero with the union personnel.

The Union filed its representation petition on March 30, 1999. Respondent admits that it knew of employee union activity prior to the filing of the petition. A representation hearing was held on April 14. Ramirez attended the hearing as a witness for the Union. The representation election was held on May 18, 1999. The employees voted against representation by the Union. The Union did not file timely objections to the election. During the election period Respondent campaigned heavily against the Union.

At all material times, Respondent has maintained a rule in its employee handbook stating, "Solicitation in working areas is not permitted at any time . . . ." On February 26, Respondent distributed a memorandum to employees reiterating the no-solicitation policy. Notwithstanding this rule, Respondent permitted the sale and purchase of candy for various fundraisers.

The General Counsel contends that on February 24 and 25 and on March 9 and March 11, Respondent engaged in surveillance of its employees' union activities. On February 24, Patrick Fisler, a slitter operator/helper, was in the receiving office talking to Ramirez about selling his computer to Ramirez. Supervisor Godenho entered the office and asked Fisler what he was doing there. Ramirez worked in this office but Fisler worked in the production area of the facility. Fisler explained that he was trying to sell Ramirez a computer. Thereafter, Godenho told Fisler that Fisler was expected to stay at his work station. Fisler was not on break at the time of his conversation with Ramirez. Evidently, Godheno reported this conversation to Dan Underwood, warehouse manager and supervisor of Ramirez and Romero.

On February 25, Ramirez, employee Frank Mariano and Romero were engaged in a conversation in the receiving office when Underwood walked in. Neither Mariano or Romero worked in the receiving office. Mariano had been in the office to repair Ramirez' computer or printer. Mariano left the office and then Romero followed. Underwood went to Mariano's office and asked what Mariano was doing in the office. Mariano answered that he was fixing Ramirez' computer. Underwood asked what they were really talking about. Mariano answered that he was fixing a problem with the computer.

Underwood testified that he could see through the window that Romero, Ramirez, and Mariano were having a conversation. It looked to Underwood that the three employees were taking a break. Underwood told the employees that even though work was slow, they were to try and keep busy. According to Underwood, after Romero and Mariano left, he spoke to Ramirez about wasting company time. Ramirez admitted that he was engaged in a personal conversation and that he needed to stay busy. Underwood asked Ramirez about the prior day when Godenho had found Fisler away from his work area and spending time in the receiving office.

On March 9, Underwood observed Romero at the break table after Romero's lunchbreak would normally be over. Underwood checked the timeclock and found out that Romero had clocked in from lunch but was still at the break table instead of returning to work. Romero's timecard for March 9 reveals that he began his lunch prior to noon. Thus, when Romero was still on break after 12:30 he had taken more than a half-hour for lunch even though he had already clocked back in. On March 11, Underwood observed Romero and Ramirez at the break tables after 12:30. They had already clocked in from lunch but had not yet returned to work. While the General Counsel contends that Underwood was engaged in surveillance on March 9 and 11, there is no evidence to support that allegation. However, the question of not returning to work after their lunchbreaks was included in the warnings given Romero and Ramirez on March 12.

On March 15, Underwood met with the receiving clerks and crane operators that he supervised, including Ramirez, a receiving clerk and Romero, a crane operator. Underwood handed out a printed break schedule for the daytime and swing shifts. The General Counsel contends that the issuance of this schedule was designed to limit the union activities of Ramirez and Romero. Respondent contends that this policy was not new and that Respondent simply reduced to writing the existing policy because some employees were abusing their lunch periods.

Prior to issuance of the memorandum, Ramirez had taken his morning break at 9 a.m. rather than at 8, his lunch at noon rather than at 10 or 10:30 a.m., and had forgone his afternoon break. Ramirez took his lunchbreaks with crane operators including Romero. He stated that by taking a later lunch, he did not have to wait to use the microwave ovens. Ramirez stated that the crane operators loaded production machines while the production employees were at lunch and then took their lunch later. Under Respondent's schedule the lunchbreaks were staggered. Further, under Respondent's scheduled employee lunchbreaks were scheduled within the 5-hour requirement of state law.

In addition to Underwood's testimony that the printed break schedule did not change the preexisting policy, Respondent offered the testimony of several employee witnesses who testified that the schedule was not a change. I credit the testimony that the memorandum of March 15 merely set forth the preexisting schedule for breaks.

Employee Thomas Styles testified that in March, he had a conversation with Underwood. Styles testified that Underwood "may have" stated something to the effect that unions were not good. Styles also testified that Underwood said "something to

the effect" that Underwood could go get a job within a week but that it would take employees a long time to find a job. Although the General Counsel alleges that this amounts to a threat, I cannot make any factual findings based on such vague testimony.

Employee Danny Marquez testified that prior to the election Godenho stated in the presence of Ballesteros that it would be simple for the Respondent to close the facility and hire new employees under a different name.

During April, Romero had a conversation with Supervisor Eric Ballesteros. Romero accused Ballesteros of pressuring employees to vote against the Union. Ballesteros denied doing so. Romero then accused Ballesteros of getting an employee named Larry in trouble. Ballesteros denied doing so. Ballesteros asked if this was why Romero had stopped talking to him and Romero answered affirmatively. Ballesteros then said "the Union is no good for J.I.T., they'll close this place down and so on." Romero answered that the business was growing and would not close down. He said that in his opinion employees had nothing to lose and everything to gain. The above findings are based on the credited testimony of Romero. Ballesteros denials are discredited. I found Ballesteros to be an untrustworthy witness and do not credit any of his testimony.

Rudy Ramirez has been a receiving clerk for Respondent for 3 years. On March 12, Ramirez was called into Hill's office to speak with Hill and Underwood. According to Ramirez, Hill stated that they were "doing it this way because of what is happening right now," presumably a reference to the union organizing. Underwood then read from a written warning. The warning stated in pertinent part:

> On 1/25/99 Rudy failed to double check the Material received against PO #6996766, in order to make sure that it matches what we ordered. The material was entered in as SSGR33, when it was actually A653–96 CS. . . . In addition, I spoke with Rudy and two other employees about wasting company time on 2/25/99, after observing them talking in the receiving office . . . . On 3/9/99, I observed Rudy at the break tables, it was after 12/30 so I checked the time clock and then went to the mailroom to check and see if Rudy was still on break. I found that Rudy had punched in from break two minutes prior. I walked back to the break area to talk to Rudy, but when I got there, he was already walking back to go to work.

Ramirez argued that he shouldn't be written up for entering the wrong grade of steel because the grade had been entered by the purchasing department. Underwood said that Ramirez should have double-checked the grade. Ramirez argued that there would be a discrepancy because supplier grades do not match the Respondent's grades. Underwood insisted that along with checking the quantity of material, Ramirez was required to check the grade of the material received. Ramirez insisted that if he was receiving a warning, so should the accounting, purchasing and shipping departments.

Ramirez said that he clocked in early from lunch but did not exceed the 30 minutes permitted for lunch. Ramirez said that he had been doing this for a long time and it had never been brought to his attention. He further argued that half of the employees followed the same practice. Hill replied that the written warning was because of the receiving error and not for clocking in. Ramirez said that Mariano was in the receiving office fixing the computer or printer and that Romero was doing some receiving duties.

The evidence shows that Respondent had ordered structural steel for its customer but received commercial steel, a lower grade of steel. Respondent's customer received the incorrect shipment in January. On or about March 10, the customer discovered the mistake. Underwood learned of this mistake on March 11 from Sales Manager Ted Dohse. Both Ramirez and Walter Albright, another receiving clerk, incorrectly received the commercial steel as structural steel. Albright also received a warning for this incident. Under Respondent's progressive discipline system,[2] Ramirez received a written warning and Albright received a verbal warning. Albright received a verbal warning because this was his first offense under the progressive discipline system. Ramirez received a written warning because he had a prior warning.

Although the General Counsel seeks to downplay this mistake, it is clear that a receiving clerk's job is to ensure that the material received and the accompanying documents from the steel mill match the specifications on the purchase order. In 1997, Ramirez received a warning for entering the wrong type of material into the system. In this instance, both Ramirez and Albright received the material as structural steel when, in fact, it was only commercial steel. The fact that the error was discovered without any harm to Respondent or the customer, does not require Respondent to excuse the mistake.

Also on March 12, Hill and Underwood delivered a written warning to Danny Romero. Under Respondent's disciplinary system, Romero received a 3-day suspension with his warning. Romero was warned for attendance problems and "wasting company time." The warning form stated:

> On 2/2, Danny called in sick and wanted to use a vacation day because he had already used his two sick days for the year. I let Danny take a sick day. . . . On 2/8/99, I called Danny in and talked to him about his attendance, I showed Danny where he had been late three times in the prior four weeks. . . . On 2/25/99, I spoke with Danny and two other employees about wasting company time, after observing them talking in the receiving office . . . on 3/9/99, I observed Danny out at the break tables, it was after 12:30 so I checked the time clock. . . I found that Danny had already punched in from break 2 minutes prior. I walked to the break area . . . but when I got there he was already walking back to go to work . . . .On 3/11, I observed Danny at the break tables again well after 12:30 . . . I found that Danny had clocked out 7 minutes prior.

Romero questioned why he was being written up for a vacation day 1 month after he had taken it. With respect to attendance, Underwood showed Romero a computer print out showing tardiness and absences. Romero admitted that his attendance should improve. Prior to the warning and suspension of March 12, Romero had received two warnings for attendance problems

[2] Respondent's discipline system is a four-step process: verbal warning, written warning, suspension and termination. Even though the first step is called a "verbal warning," there is a written document which reflects it.

and two negative job evaluations. With respect to clocking in after lunch, Romero argued that he had a half-hour for lunch. Underwood said that once Romero had clocked in he was required to work even if he had taken a shorter lunch period. Underwood argued that once an employee had clocked in, he was indicating to the company that he was working and not on break. Romero questioned why Underwood had not pointed out these alleged mistakes when they occurred. Romero accused Respondent of taking this action because of the union organizing. Hill denied doing so.

The record reveals that Romero had been disciplined for attendance problems in September 1997 and May and September 1998. Further, in May 1998, in a regular performance review, Respondent stressed that Romero "needs to improve his attendance." In November 1998, Romero received another negative performance review. In that review, Underwood wrote that Romero "needs to improve attendance" and Underwood rated Romero's attendance as "Less than acceptable."

On April 8, Hill and Underwood gave another warning. Hill read from the warning stating:

> The following is a list of items that have brought this situation to a final notice.
>
> 1. 32 days absent in the past 6 months.
> 2. Six tardies or left early in the past six months.
> 3. Not punching time clock.
> 4. Defrauding the company of work time (9/30/97, 3/12/99)
> 5. Insubordination to a supervisor. (9/30/97)

Of the 32 absences charged against Romero, 20 were due to a back injury. Hill stated that this did not excuse the fact that Romero had so many absences. Hill also mentioned tardies "left (sic) earlies" and failure to punch the timeclock properly. Romero said he left early only with permission and that he had on occasion forgot to punch out. Romero was not suspended or terminated, although he had a verbal warning and two prior written warnings (including the suspension of March 12).

The record shows that Romero had these absences and attendance problems. However, all of these problems occurred prior to March 12. After, March 12, Romero took 6 hours of vacation time on March 26. The March 26 vacation time was approved by Underwood.

Conclusions

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Corp.*, 462 U.S. 393, 399–403 (1983). In *Manno Electric, Inc.*, 321 NLRB 278, 280 fn. 12 (1996), the Board restated the test as follows: The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employees had not engaged in protected activity.

For the following reasons, I find that the General Counsel has made a prima facie showing that Respondent was motivated by unlawful considerations in issuing a warning to Ramirez. First, Ramirez was engaged in protected concerted activities and Respondent was aware of such activities. There is evidence that Respondent strongly opposed unionization. The discipline occurred during a time period when Ramirez was actively engaged in union activities and shortly after Ramirez was seen with the union handbillers. Finally the discipline included rather weak references to wasting company time and not returning to work after lunch.

However, I find that Respondent has met its burden under *Wright Line* in establishing that Ramirez made an error in receiving commercial steel as structural steel and that Ramirez would have been disciplined for this mistake absent his union activities. Ramirez was disciplined as soon as Respondent discovered the receiving error. The other receiving clerk was also disciplined for the same offense. The receiving error went to the essence of Ramirez' duties as a receiving clerk. Respondent followed its established disciplinary procedure. Thus, because of prior discipline Ramirez received a written rather than a verbal warning. Albright, the other receiving clerk, received a verbal warning because he had no prior discipline. Albright admitted that the two clerks were at fault.

It has long been held that there are five principal elements that constitute a prima facie case insofar as Section 8(a)(3) and (1) are concerned. The first is that the employee alleged to be unlawfully disciplined must have engaged in union or protected activities. The second is that the employer knew about those protected activities. Third, there must be evidence that the employer harbored animus against those individuals because of such activities. Fourth, the employer must discriminate in terms of employment. Finally, the discipline must usually be connected to the protected activity in terms of timing. See, e.g., *Goodyear Tire & Rubber Co.*, 312 NLRB 674 (1993).

For the following reasons, I find that the General Counsel has made a prima facie showing that Respondent was motivated by unlawful considerations in issuing a warning to Romero. First, Romero was engaged in protected concerted activities and Respondent was aware of such activities. There is evidence that Respondent strongly opposed unionization. The discipline occurred during a time period when Romero and Ramirez were actively engaged in union activities and shortly after Romero was seen with the union staff handing out leaflets. Finally the discipline involved rather weak references to wasting company time and not returning to work after lunch.

Although the allegations of wasting company time and not returning to work appear petty to me the issue is whether Respondent was motivated by union animus in giving Romero such a warning. Romero had a history of absenteeism and tardiness. Underwood observed Romero taking a break after he had clocked back into work, on two occasions. Further, Underwood observed Romero taking a break in the receiving office with Mariano and

Ramirez. Coupled with an absence and a tardiness in February, Respondent issued Romero a warning. I find that Respondent would have issued this warning even in the absence of the Romero's union activities.

However, on March 30, the Union filed a representation petition and an unfair labor practice charge against Respondent. Thereafter, on April 8, Respondent issued another warning to Romero relying on conduct that occurred prior to March 30. The timing of these events leads to a strong inference that Romero's union activities, the charge and the petition, were the motivating factors for the disciplinary warning. Further, the issuance of a "final warning" was a departure from Respondent's disciplinary procedure. Romero's poor attendance record justifies the warning and suspension of March 12 but cannot serve to establish yet another warning after escalation of the union activities. The evidence reveals no intervening misconduct by Romero between the warning of March 15 and the warning of April 8. The only intervening fact was the filing of the charge and petition.

The burden shifts to Respondent to establish that the same action would have taken place in the absence of Romero's protected activities. Respondent has not met its burden under *Wright Line*. It has not established any reason for a warning on April 8 other than events which took place prior to the March 12 warning. Further, its established disciplinary system did not provide for a final warning after a suspension.

Accordingly, I find that the warning given to Romero on April 8 was motivated by the employee's protected concerted activities, the filing of the petition, and the filing of the charge and, that Respondent has not established that it would have issued Romero a warning absent protected conduct. Thus, I find that Respondent has failed to carry its burden under *Wright Line* and that the warning of April 8 violated Section 8(a) (1) and (3) of the Act.

Independent 8(a)(1) allegations

1. As found above, prior to the election supervisor Rui Godenho told employee Danny Marquez in the presence of supervisor Eric Ballesteros that it would be simple for the Respondent to close the facility and hire new employees under a different name. During April, Eric Ballesteros told Romero "the Union is no good for J.I.T., they'll close this place down and so on." Romero answered that the business was growing and would not close down. I find that by such conduct Respondent violated Section 8(a)(1) of the Act.

2. Respondent's no-solicitation rule states in pertinent part "Solicitation in working areas is not permitted at any time." That rule herein was republished in January 1999. The Board has held that no-solicitation rules generally must be limited to working time. See *Hale Nani Rehabilitation*, 326 NLRB 335 fn. 2 (1998). The rule bars union discussions at work station, when employees are returning from breaks, and in the absence of any particular showing of interference with production or discipline, and is therefore unlawful. *FGI Fibers, Inc*., 280 NLRB 473, 474 (1986); *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 619 (1962). That Respondent has not enforced the rule does not vitiate the rule's coercive effect. *Pullman, Inc.,* 221 NLRB 1088, 1089 (1975).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By issuing a disciplinary warning to Danny Romero because of his union and protected concerted activities, Respondent violated Section 8(a) (1) and (3) of the Act.

4. By threatening to close its business in the event of unionization, Respondent violated Section 8(a)(1) of the Act.

5. By maintaining an overly broad no-solicitation rule which prohibited solicitations during nonworking time, Respondent violated Section 8 (a) (1) of the Act.

6. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

Respondent shall also be required to expunge any and all references to its unlawful warning of Romero from its files and notify Romero in writing that this has been done and that the unlawful discipline will not be the basis for any adverse action against him in the future. *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, J.I.T. Steel, Inc., Tulare, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Issuing warning notices to employees in order to discourage union activities.

(b) Threatening to close its business in the event of unionization.

(c) Maintaining an overly broad no-solicitation rule which prohibited solicitations during nonworking time.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from its files any and all references to the April 8, 1999 warning of Danny Romero and notify him in writing that this has been done and that Respondent's discipline of him will not be used against him in any future personnel actions.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Within 14 days after service by the Region, post at its Tulare, California facilities copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by Respondent's authorized representative, shall be posted for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced, or covered by other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the attached notice to all current employees and former employees employed by the Respondent at any time since January 1999.

(c) Within 21 days after service by the Region, file with the Regional Director, a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES
GOVERNMENT

[4] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT issue warnings or otherwise discipline employees in order to discourage union activities.

WE WILL NOT threaten to close our business in the event of unionization.

WE WILL NOT maintain an overly broad no-solicitation rule which prohibits solicitations during nonworking time.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL remove from our files any and all references to the unlawful discipline of Danny Romero issued on April 8, 1999, and notify him in writing that this has been done and that the fact of this unlawful discipline will not be used against him in any future personnel actions.

J.I.T. STEEL, INC.